

(1983) 11 DEL CK 0027

In the Delhi High Court

Case No : Income Tax Ref. No. 122 of 1976

D.N. Nanda and Sons

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision : 28-11-1983

Acts Referred:

Citation : (1984) 40 CTR 278 : (1984) 39 CTR 167 : (1984) 149 ITR 96 : (1984) 16 TAXMAN 365

Hon'ble Judges : S.S. Chadha, J;H.C. Goel, J

Bench : Division Bench

Judgement

S.S. Chadha, J.—This Reference u/s. 256(1) of the IT Act (hereinafter called as the Act) at the instance of the assessed raises the following two questions :

"1. Whether on the facts and in the circumstances of the case the Tribunal was right in rejecting the assessed's claim that the market value on the date when the property was impressed with the character of HUF property should be taken as its cost of acquisition in the hands of the assessed ?

2. Whether on the facts and in the circumstances of the case, the Tribunal was right in holding that the cost of acquisition of property No. G-16, New Delhi South Extension in the hands of the assessed HUF was nil ?"

2. The assessed M/s. Deena Nath Nanda & Sons is an HUF. The year of assessment in question is 1970-71. The accounting year ended on 31-12-1970. A plot of land bearing No. 16 Block G, New Delhi south Extension Scheme, Part I was purchased by Shri Deena Nath Nanda and his wife Smt. Rattan Devi Nanda. A two and half storied building thereafter was constructed thereon and the total cost came to Rs. 76,748. Two affidavits in similar terms dt. 30-3-1968 one by Shri D. N. Nanda and the other by his wife Smt. Rattan Devi were executed. It was narrated in these that they jointly owned the said property in their individual and personal capacities and that w.e.f. that date they had thrown their shares in that property in the common hotchpot of the HUF styled as "Deena Nath Nanda &

Sons.", Constituting of Deena Nath, his wife Smt. Rattan Devi and two Sons S/ Shri Vishwanath Nanda and Surinder Nath Nanda. Subsequently by a sale deed dt. 12-10-1969 the HUF of "Deena Nath Nanda and Sons" sold this property for a consideration of Rs. 1,40,000. In the return which HUF filed for the assessment year in question it has declared a capital gain of Rs. 63,252 being difference of sale price of Rs. 1,40,000 and the original cost of land and construction viz. Rs. 76,748. The ITO however, came to the conclusion that since the assessed HUF had not paid any cash consideration at the time of the acquisition of the property Therefore such cost should be treated as nil and the entire sale proceeds of Rs. 1,40,000 were assessable as capital gains. In appeal, at the instance of the assessed the AAC accepted the capital gain figure of Rs. 63,252 as decided by the assessed in the original return subject to deduction as were permissible u/s. 80T of the Act. Both sides felt arrived and went in the second appeal to the IT Appellate Tribunal. The Appellate Tribunal for the reasons mentioned in the order came to the conclusion that the cost of acquisition of the property in the hands of the assessed was nil. The appeal of the revenue was allowed partly and the appeal of the assessed was rejected.

3. A similar question came up for consideration before a Division Bench of this Court to which one of us (S. S. Chadha, J.) was a party. It is reported as Addl. Commissioner of Income Tax Vs. Madan Lal Jain and Sons., . The provisions of ss. 45 and 48 of the Act were construed. It was held that a profit or gain can accrue only when there is a cost of acquisition and not otherwise. The cost of acquisition contemplated by s. 48 of the Act can be the cost of acquisition of the capital in someone's hands and not necessarily in the hands of the assessed as the second does not use the words "to the assessed" after the words "cost of acquisition". Therefore, what was spent by the Karta of the assessed HUF, would be the cost of acquisition within the meaning of s. 48. In the case before us the cost of land and construction was Rs. 76,748 and the asset was sold for a consideration of Rs. 1,40,000. Therefore, what was spent by Shri Deena Nath and his wife Smt. Rattan Devi, who had thrown their shares in the property in the common hotchpot of the HUF. i.e. the assessed would be the cost of acquisition within the meaning of s. 48.

4. Similar question arose in Commissioner of Income Tax, Tamil Nadu-III Vs. N.S. Krishna Rao, , wherein a Division Bench of the Madras High Court was to construe the meaning of cost of acquisition of the asset by an individual throwing capital asset into hotchpot of HUF. The Madras High Court upheld the view of the ITO that Rs. 25,639 being the written down value which the machinery bore at the time the family got it gratis from K, the Karta of the assessed family should be taken as the cost of the machinery to the family and the capital gains worked out on that basis. In a recent case a Division Bench of the Gujarat High Court in Commissioner of Income Tax, Gujarat Vs. Ashiwin M. Patel, considered the question of the shares thrown in the hotchpot by the Karta. It was held that when shares were thrown by the Karta of the HUF into the family hotchpot the acquisition of shares to the HUF for purposes of computing capital gains arising

from the sale of shares would be the market value of the shares, as on the date on which it acquired them namely, the date on which they were thrown into the common hotchpot by the Karta. The Gujarat High Court in out opinion, with due respect to the Id. Judges have gone a little too far. But it is, however, not necessary to express any considered opinion in this case. The cost of acquisition within the meaning of s. 48 would be the cost of acquisition to Shri Deena Nath Nanda and his wife Smt. Rattan Devi Nanda, which has been calculated by the ITO at Rs. 76,748.

5. Accordingly we answer the two questions in favor of the assessed and against the department. There will be no order as to costs.